



# Dental hygiene and therapy – legal considerations

**Sarah Buxton<sup>1</sup> and Miranda Steeples<sup>2</sup>**

caught up with one another recently to chat about some of the legal aspects facing the profession, and offer helpful advice for peace of mind.

**Miranda: Have you seen an increase in legal enquiries from dental hygienists and dental therapists?**

**Sarah:** We have certainly seen an increase in legal enquiries from dental hygienists and dental therapists over the last six months, particularly in respect of contract queries.

**Miranda: Why do you think that is?**

**Sarah:** We believe that the increase in the need for legal advice is related to IR35<sup>1</sup> and the fact that many dental practices have issued new contracts to their self-employed dental hygienists and dental therapists with a view to protecting their self-employed status.

Quite reasonably, dental hygienists and dental therapists require assistance understanding the terms of the contracts as they can contain some legal jargon.

**Miranda: Given the issue around the employment status of dental hygienists and dental therapists, can you please explain it and the potential impact?**

**Sarah:** The issue surrounding employment status arises from IR35, which is essentially the government changing the way in which they determine the employment status of individuals for tax purposes.

The risk to dental practices is that if a person is found to be an employee or a

## Author information

<sup>1</sup>Sarah Buxton is a solicitor specialising in employment law for the healthcare profession and is a director of Buxton Coates Solicitors; <sup>2</sup>Miranda Steeples is the President of the British Society of Dental Hygiene and Therapy (BSDHT).



Miranda Steeples



Sarah Buxton

worker, they may be liable for paying their income tax and National Insurance. This is why most dental practices are reviewing their contracts to include self-employed indicators in an attempt to mitigate this risk.

Our advice is that if a person is genuinely self-employed, then this should not affect their position. However, a lot of dental practices are opting to take the 'low risk' option of engaging their dental hygienists and dental therapists on an employed or worker basis.

Whether an individual is genuinely self-employed depends on the contract in place and the substance of the relationship between the practice and the individual. Ultimately, this comes down to how much control the practice has over the individual in their engagement.

If anyone is concerned about their employment status, I would suggest they take specific legal advice and, for tax purposes, seek the advice of an accountant.

### **Miranda: What are the other key issues affecting dental hygienists and dental therapists?**

**Sarah:** So, beyond the issues related to new contracts and contract disputes, we are also seeing issues where there have been disagreements with colleagues, which we understand can be quite upsetting for those involved.

### **Miranda: Why are all these issues presenting themselves?**

**Sarah:** Many different factors can contribute to contract disputes arising. Commonly, this can be due to a misunderstanding of the terms of the agreement or disagreements in respect of losses incurred by the practice as a result of the clinician's actions.

For example, if we look at a dispute in

methods of dispute resolution both inside and outside of court.

**Miranda: What initial advice can you give to dental hygienists or dental therapists if they find themselves facing a potential legal problem in their professional lives, for example receiving a letter from a solicitor?**

**Sarah:** First of all, do not panic as, more often than not, there will be options available to them!

They should contact a solicitor to have an

*'The issue surrounding employment status arises from IR35, which is essentially the government changing the way in which they determine the employment status of individuals for tax purposes.'*

respect of pay, it might arise if it was believed the practice had incurred losses due to equipment being broken by a clinician and so they deduct this from their pay.

The clinician may believe that the equipment breaking was not their fault. Whether the deduction would amount to a breach of contract would depend on the individual circumstances and the wording of the contract.

There can also be disagreements between colleagues, which are often a result of a lack of communication and, in most cases, can be resolved informally with guidance.

### **Miranda: Is the economy affecting disputes?**

**Sarah:** The economy is affecting disputes in that individuals and businesses do not necessarily have funds readily available in order to pursue or defend claims in respect of monies they are entitled to or losses they have incurred. We would recommend taking out legal expenses insurance for cover in these circumstances.

### **Miranda: How does the legal system support dental hygienists and dental therapists?**

**Sarah:** The legal system supports dental hygienists and dental therapists by providing facilities for taking advice and offering various

initial conversation about the situation and the options available to them in respect of advice and funding for this.

### **Here if you need us**

BSDHT members may obtain legal advice by putting their query in writing to [enquiries@bsdht.org.uk](mailto:enquiries@bsdht.org.uk) in the first instance, so the question can be triaged and logged. Then, if appropriate, the member can be put in contact with a representative of the Buxton Coates Solicitors team.

For further information on BSDHT membership, visit [www.bsdht.org.uk](http://www.bsdht.org.uk).

### **References**

1. HM Revenue & Customs. Understanding off-payroll working (IR35). Updated 9 March 2023. Available at: <https://www.gov.uk/guidance/understanding-off-payroll-working-ir35> (accessed August 2023).

<https://doi.org/10.1038/s41407-023-1953-8>